

NTSB Order No.  
EM-4

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D. C.

Adopted by the National Transportation Safety Board  
at its office in Washington, D. C.,  
on the 25th day of April, 1969.

WILLARD J. SMITH, Commandant United States Coast Guard

vs.

CARL N. KUNTZ

Docket No. ME-3

OPINION AND ORDER

The appellant, Carl N. Kuntz, has appealed to this Board from a decision of the Commandant revoking his license, merchant marine's document, and all other seaman's documents.<sup>1</sup> This action of the Commandant was taken after appellant had appealed to him (Appeal No. 1694) from the initial order of revocation entered by Coast Guard Examiner Thomas L. Mackin.

The examiner's action was taken after holding a hearing at which appellant was called to answer a charge of misconduct preferred by the Coast Guard under authority of U.S.C. 239(g). The misconduct charged occurred while appellant was serving under the authority of his license (License No. 322484) as Third Assistant Engineer of the SS CARROLL VICTORY, a merchant vessel of the United States, on a voyage to the Far East. At the examiner's hearing and throughout these appellate proceedings, appellant has been represented by counsel.

At the termination of the hearing, the examiner issued an initial decision in which he concluded, on the record made before him, that the charge of misconduct had been proved against appellant. This conclusion was reached, based upon the examiner's findings that appellant had deserted his vessel in a foreign port and had committed numerous prior offenses, hereinafter described, during the voyage in question.

---

<sup>1</sup>Appeal to this board from a revocation of license by the Commandant is authorized under 49 U.S.C. 1654(b)(2). The Board's rules of procedure governing such appeals are set forth in 14 CFR Part 425.

Appellant's desertion took place at the port of Moji, Japan. His other offenses, spanning a previous period of 45 days, occurred

aboard the vessel at various ports of call in the Far East. According to the findings of the examiner, <sup>2</sup> appellant's offenses, in addition to desertion, all of which were found to be "wrongful," were: possession of intoxicating liquor (a case of beer) and participation in a disturbance while intoxicated on one date; failure to perform duties (to stand watch) on five separate dates; destruction of ship's property (his mattress) on one occasion; and participation in a fist fight aboard the vessel on another occasion.

In imposing the sanction of revocation on the appellant, both the Commandant and the examiner gave consideration to his prior disciplinary record in the U. S. Merchant Marine.<sup>3</sup> Appellant's prior record disclosed that two previous suspensions had been imposed on him in the years 1951 and 1952, and one admonition having been entered against him in 1958. Appellant's "persistent" pattern of misbehavior aboard the SS CARROLL VICTORY, his prior record and his final act of deserting his vessel in a foreign port, were taken by the examiner and the Commandant as cumulative factors warranting the revocation of his license and other seaman's papers in this case.<sup>4</sup>

On this appeal, appellant contends that the Commandant erred in affirming the examiner's decision, particularly with respect to the finding that appellant had deserted his ship in a foreign port. Appellant cites case law standing for the propositions that a seaman is justified in leaving his vessel for just fears for his personal safety; that there must be an intent not to return in order to constitute the offense of desertion and that a seaman who goes ashore for the purpose of seeking redress from the U. S. Counsel, for reasonable cause, cannot be held a deserter if the vessel sails without him while he is so engaged. Appellant urges the application of these legal principles upon the Board, claiming

---

<sup>2</sup>A copy of the examiner's initial decision is attached hereto as Exhibit A.

<sup>3</sup>Regulations of the Commandant governing revocation proceedings under 46 U.S.C. 239(g) are set forth in 46 CFR Part 137. Section 137.20-155(a)(5) instructs the examiner to consider the prior record of person charged before making an order disposing of the case.

<sup>4</sup>A copy of the Commandant's decision is attached hereto as Exhibit B.

that the evidence in this case is "well-defined that [he] did, in fact, leave the ship because of fear for his personal safety and the safety of others, and thus, for this period of time, the ship was unseaworthy."

From our review of the entire record, we find there is no basis for this contention. Appellant's direct testimony negatives the claim that his desertion was caused by fear for his personal safety. Rather, it shows that he decided to go ashore on the evening in question, knowing that the sailing time of the vessel had been posted for 0800 hours the following morning; that he and a companion, one James D. Peters,<sup>5</sup> then obtained a local hotel room and that both of them "just overslept" the next morning. (Tr., p.78.) Moreover, if believed, the testimony of the Third Mate on watch, who encountered appellant and Peters going ashore, shows appellant's clear intention of not returning to his vessel. This witness testified that: "Shortly after midnight in the passageway [Kuntz] informed me, 'Mr. Johnson, you can call the captain and tell him we are leaving this ship, gear and license.'" (Tr., Exh. 17, p.3.)

Appellant further testified that he left the vessel carrying only a few items in an overnight bag and did not take his license. However, this was contradicted by the testimony of the Master and the Chief Engineer that they had searched appellant's quarters the following day and found that all of his personal belongings had been taken off the vessel. These two witnesses and the Third Mate testified further that appellant's license was missing from its proper place in the engineer's license rack, after appellant left the ship at Moji.

Appellant's claim of leaving the vessel to protect another's (i.e. Peters') safety lacks support in the record. His own testimony discredits this assertion, as follows: "I proceeded to go ashore....after the incident the Chief had with Mr. Peters. Whether Peters was going ashore or not, I intended to." (Tr., p.72.) Moreover, the record contains uncontroverted evidence that no attempt was made by appellant or his companion to contact the U. S. Counsel until the SS CARROLL VICTORY had already made her departure from Moji.

---

<sup>5</sup>Mr. Peters was Second Assistant Engineer on the SS CARROLL VICTORY. He was also charged with misconduct for desertion and numerous other offenses on this voyage, for which his license was also revoked after a Coast Guard hearing. Mr. Peter's appeal to this Board was dismissed for failure to perfect the appeal by filing a brief. See Board decision in Commandant v. Peters, Order No. EM-2, adopted December 4, 1968.

The examiner believed that pivotal testimony of the Third Mate concerning appellant's stated intentions to him upon leaving the vessel and rejected the appellant's conflicting testimony. We find nothing in the record which would warrant our disturbing the examiner's resolution of the conflicting evidence. Moreover, from our reading of the record, we agree with the Commandant that appellant's testimony concerning his intention to return before the vessel left port was simply not credible. At the time the appellant left the SS CARROLL VICTORY, therefore, it is clear from the examiner's findings that he took with him all his belongings and his license, that he was not in fear of his own personal safety and made no effort to seek redress, in the proper manner, for purported grievances on his own or Peters' behalf. Under this state of affairs, when appellant failed to join his vessel at the appointed departure time from Moji, his act of desertion was consummated according to applicable case law. (In re Scott's Petition, 143 F.Supp. 175 (N.D. Calif., 1956); Ennis v. Waterman S. S. Corp., 49 F.Supp. 685 (S.D.N.Y., 1943); Flynn v. Waterman S. S. Corp., 44 F.Supp. 50 (E.D.N.Y., 1942).)

Concerning his prior acts of misconduct aboard the SS CARROLL VICTORY, we are urged by the appellant to give a "long look" for inconsistencies at the testimony adduced to establish these offenses from the Master, Chief Engineer and Third Mate. The record discloses that these witnesses all testified in detail to appellant's various derelictions of duty and other violations of good order aboard the vessel, previously enumerated herein. Our examination of their testimony discloses no significant inconsistencies among these witnesses and the examiner properly decided all material issues of credibility.

In sum, it appears to the Board that appellant's act of desertion and all prior offenses committed by him aboard the SS CARROLL VICTORY, according to the findings of the examiner and the Commandant, are fully supported by substantial, reliable and probative evidence of record. Therefore, we adopt these findings as our own. Moreover, the Board agrees that this series of petty offenses and recalcitrant behavior aboard ship, coupled with the serious offense of desertion in a foreign port, clearly constitute misconduct under 46 U.S.C. 239(g) and regulations of the Commandant issued thereunder, namely 46 CFR 137.05-20(a)(1).<sup>6</sup> Finally, we are

---

<sup>6</sup>Section 137.05-20(a)(1) defines "misconduct" as "a human behavior which violates some formal, duly established rule, such as the common law, the general maritime law, a ship's regulation or order, or shipping articles. In the absence of such a rule, 'misconduct' is human behavior which a reasonable person would consider to constitute a failure to conform to the standard of

of the view that the revocation of appellant's license is here warranted, taking into account the continuing pattern of his offenses aboard the SS CARROLL VICTORY, his prior suspensions for misconduct on other vessels, and, for the most part, his unjustified desertion of the SS CARROLL VICTORY in a foreign port.

ACCORDINGLY, IT IS ORDERED THAT:

1. The instant appeal be and is hereby denied; and
2. The orders of the Commandant and the examiner revoking all of appellant's mariner's documents be and they hereby are affirmed.<sup>7</sup>

O'CONNELL, Chairman, and LAUREL, REED, THAYER and McADAMS, Members of the Board concurred in the above opinion and order.

(SEAL)

---

conduct which is required in the light of all the existing facts and circumstances."

<sup>7</sup>Two procedural matters raised by appellant are disposed of as follows: (1) his request for oral argument before the Board is denied, having failed to show good cause therefor as required under the rule in 15 CFR 425.25; and (2) his request to the Board for an interim license during the pendency of this appeal is denied. See our decision in Commandant v. Voutsinas, Order EM-1, adopted October 24, 1968. However, since Coast Guard action on appellant's request has been taken, granting him a temporary license pending action by the Board, this issue appears to be moot.